



DEPARTMENT OF THE NAVY

NAVAL SEA SYSTEMS COMMAND
WASHINGTON, D.C. 20382

IN REPLY REFER TO

Contract N00024-85-C-0200
FOR THE DONATION OF
THE EX-ALBACORE AGSS-569)

THIS CONTRACT, entered into this 3rd day of May 1985 by and between the UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Department of the Navy, and the Portsmouth Submarine Memorial Association, INC., located at Portsmouth, New Hampshire (hereinafter referred to as the "DONEE").

WITNESSETH:

WHEREAS, the Act of August 10, 1956 (P. L. 1028, 84th Congress), 10 U.S.C. 7308, authorizes the Secretary of the Navy to transfer by gift or otherwise, on terms prescribed by him, any obsolete vessel of the Navy to any State, municipal corporation of the United States, or any corporation or association whose Charter denies it the right to operate for profit; and

WHEREAS, the DONEE has applied for donation of the obsolete submarine EX USS ALBACORE (EX-AGSS-569) (hereinafter called the "Vessel"), and has indicated its intention to preserve and exhibit the Vessel; and

WHEREAS, the DONEE agrees to and undertakes the obligation to make and keep the Vessel safe and presentable for public exhibition and inspection, at no expense to the Government; and

WHEREAS, pursuant to 10 U.S.C. 7308, notice of the proposed transfer has been duly sent to the Congress, and Public Law 98-149 was enacted to expedite this donation;

NOW THEREFORE, the Government agrees to transfer the Vessel to the DONEE and the DONEE agrees to accept the Vessel subject to the following terms and conditions:

1. The Government shall, subject to the provisions of Article 4 and 14 hereof, deliver the Vessel to the DONEE at the Portsmouth Naval Shipyard, Portsmouth, New Hampshire, on an "AS IS, WHERE IS" basis and without warranty of any kind, and shall notify the DONEE of the delivery date sufficiently in advance thereof to enable the DONEE to make necessary arrangement for acceptance of delivery.
2. The DONEE shall accept the Vessel upon delivery by the Department of the Navy.
3. The DONEE shall not activate or permit to be activated any system aboard the Vessel for the purpose of navigation or movement of the Vessel under its own power nor shall the galley be activated for the purpose of serving meals.

4. The DONEE shall maintain the Vessel in a condition satisfactory to the Department of the Navy. Prior to delivery of the Vessel the DONEE, pending completion of the permanent-base mooring, shall present evidence satisfactory to the Government that there has been successful initiation of construction of the permanent display site. The final museum/grounds project shall be completed within a reasonable period of time after delivery of the vessel. In the event that the Donee, or its assigns, fail to display the vessel in the manner approved by the Department of the Navy, the Donee shall return the vessel, in the condition as when transferred, to Navy custody at the Naval Inactive Ships Maintenance Facility, Philadelphia, Pennsylvania, at the expense of the Donee. Within six (6) months of the signing of this contract, the donee shall resubmit to the Navy, a redesign of the permanent support structure as well as detailed procedures to be used in transferring ex USS ALBACORE from the temporary base to the permanent support structure for Navy approval. Donee shall have the permanent support structure in place within one (1) year after receipt of such approval by the Navy. Pending completion of the permanent display site, temporary display of the vessel shall be effectuated in a manner and at a site acceptable to the Navy. Prior to delivery of the Vessel, the DONEE shall provide towing at no cost to the Government. Within 120 days of the execution of this contract, the DONEE shall submit a plan acceptable to the Navy for ship refurbishment and continuing maintenance. The maintenance obligations assumed by the DONEE shall include, but shall not be limited to (a) the performance of all necessary painting and cleaning of exterior surfaces and interior compartments and passageways open to the public, (b) the provision and maintenance in all public and private spaces of such handrails, warning signs, fire protection systems, lighting and ventilation systems, and other safety devices as are necessary to insure the safety of the visiting public and of maintenance personnel aboard the Vessel, (c) assurance of the watertight integrity of the hull while the Vessel is afloat, (d) the provision and maintenance of safe and efficient means of access and egress (e) the provision and maintenance of suitable sanitary facilities ashore for visitors, and (f) such other safety and maintenance work as determined to be reasonably necessary. All obligations hereunder shall be performed by the DONEE at its own expense and without reimbursement or contribution by the Government. All work performed hereunder shall be subject to approval of the Commanding Officer, Portsmouth Naval Shipyard, Portsmouth, New Hampshire.

5. The DONEE shall procure and maintain at its own expense, without reimbursement or contribution by the Government, from and after the delivery of the Vessel, Tower's broad-form liability insurance, including Tower's coverage for negligent damage to the Vessel during any tow and marine hull and protection and indemnity liabilities, all in an amount not less than \$150,000 to cover the Vessel so long as the Vessel is waterborne. Upon completion of the permanent mooring arrangement, the DONEE shall procure not less than \$150,000 of fire and extended-coverage insurance, including risks of vandalism and malicious mischief, and third-party bodily-injury liability insurance in an amount not less than \$500,000 (Single Limit) per occurrence and third-party property damage insurance in an amount not less than \$200,000 for any occurrence. Such insurance shall at all times protect the United States Government, its agents or employees, from claims resulting or alleged to have arisen from fault, negligence, wrongful acts or omission of the Government, its agents or instrumentalities or their agents or employees, in berthing, preparation for use, repairing or any other use, and shall, as to form and insurers, be subject to the approval of the Insurance Section (MAT-023N), Naval Material Command, Department of the Navy, Washington, D. C. 20360.

6. The DONEE shall present evidence satisfactory to the Government, within 180 days of the execution of this agreement, that the DONEE has the financial means necessary to assure accomplishment of all the obligations hereunder.
7. The DONEE shall prohibit members of the general public from visiting aboard the Vessel prior to the accomplishment of all work necessary to make the Vessel safe and presentable for the public inspection, except as may be authorized by the Department of the Navy. The DONEE shall perform no operation or allow work to be performed which will cause penetration of the outer hull or pressure hull in any manner without prior written consent of the Secretary of the Navy or of his duly authorized representative.
8. The Government reserves the right to remove equipment from the Vessel required to satisfy Fleet material needs. In cases where such removal effects the display of the Vessel, the Navy will attempt to provide a cosmetically suitable piece of equipment as a replacement.
9. The DONEE shall not transfer or otherwise dispose of the Vessel or any part thereof, or any other property donated hereunder, or any interest therein without the prior written consent of the Secretary of the Navy or of his duly authorized representative.
10. The DONEE shall indemnify, save harmless and defend the Government, from and against all claims, demands, actions, liabilities, judgments, costs and attorney's fees, arising out of, claimed on account of, or in any manner predicated upon personal injury, death, or property damage caused by or resulting from possession and/or use of the donated property.
11. The DONEE shall comply with all Federal, State, and local laws and regulations in being or that may be hereinafter enacted or issued relating to protection of the environment, public health, and safety.
12. The DONEE shall submit to the Naval Sea Systems Command (SEA OOD), Washington, D. C. 20362, an annual material inspection report on the condition of the Vessel on or before June 30th of each year that this agreement is in effect. The Government may conduct an annual physical inspection of the Vessel.
13. The DONEE acknowledges that it has executed and furnished to the Government representative under this contract, the Navy Form "Assurance of Compliance with the Department of Defense Directive under Title VI of the Civil Rights Act of 1964"; that it has read the explanation of the Department of Defense accompanying said Navy form; and that all sanctions imposed and actions taken as a result of non-compliance therewith shall be in accordance with DOD Directive 5500.11, dated 27 May 1971, "Non-Discrimination in Federally Assisted Programs."
14. In the event that the Vessel is lost or destroyed prior to the time of delivery, by fire, shipwreck, act of Providence or of a foreign power, or by any other means whatsoever, whether by negligence on the part of the Government or not, this Agreement shall become void and of no effect.

15. Upon delivery to and acceptance by the DONEE, title to the Vessel shall vest in the DONEE and title shall remain in the DONEE until transferred under Articles 19 or 21 of this contract.
16. The Government shall not be liable to the DONEE in any manner whatsoever for damages, on account of delayed delivery or non-delivery of the Vessel or for any other reason.
17. No expense shall result to the Government as a consequence of the transfer of the Vessel to the DONEE or as a consequence of the terms and conditions prescribed hereunder including the termination provision.
18. (a) This contract is subject to the Contract Disputes Act of 1978 (P. L. 95-563) (hereinafter called the Act).

(b) Except as provided in the Act, all disputes arising under or relating to this contract shall be resolved in accordance with this clause.

(c)(1) As used herein, "claim" means a written demand or assertion by one of the contracting parties seeking, as a matter of right, the payment of money, adjustment, or interpretation of contract terms, or other relief, arising under or relating to this contract. However, a written demand by the Contractor (DONEE herein) seeking the payment of money in excess of \$50,000 is not a claim unless or until certified in accordance with (d) below.

(2) A voucher, invoice, or other routine request for payment that is not in dispute when submitted is not a claim for the purposes of the Act. However, where such submission is subsequently disputed either as to liability or amount or not acted upon in a reasonable time, it may be converted to a claim pursuant to the Act by complying with the submission and certification requirements of this clause.

(3) A claim by the Contractor shall be made in writing and submitted to the Contracting Officer for a written decision. A claim by the Government against the contractor shall be subject to a written decision by the Contracting Officer.

(d) For contractor claims of more than \$50,000, the Contractor shall submit with the claim a certification that the claim is made in good faith; that the supporting data is accurate and complete to the best of the Contractor's knowledge and belief; and that the amount requested accurately reflects the contract adjustment for which the Contractor believes the Government is liable. The certification shall be executed by the Contractor if an individual. When the Contractor is not an individual, the certification shall be executed by a senior company official in charge at the Contractor's plant or location involved, or by an officer or general partner of the Contractor having overall responsibility for the conduct of the Contractor's affairs.

- (e) For contractor claims of \$50,000 or less, the Contracting Officer must, if requested in writing by the Contractor, render or issue a decision within 60 days of the request. For contractor-certified claims in excess of \$50,000, the Contracting Officer must decide the claim within 60 days or notify the Contractor of the date when the decision will be made.
 - (f) The Contracting Officer's decision shall be final unless the Contractor appeals or files a suit as provided in the Act, or amendments thereto.
 - (g) Interest on the amount found due on a contractor claim shall be paid from the date the Contracting Officer receives the claim, properly certified (if required in accordance with this clause), or from the date the payment otherwise would be due, if such date is later, until the date of payment.
 - (h) The Contractor shall proceed diligently with performance of this contract, pending final resolution of any request for relief, claim, appeal, or action arising under the contract, and comply with any decision of the Contracting Officer.
19. The Government may, during a national emergency, request the DONEE to return the Vessel and the DONEE shall, if and when requested to do so, return the Vessel to the place of delivery to the DONEE at no cost or expense to the Government. In the event that the DONEE, or its assigns, shall fail to perform the obligations assumed under this contract, the Secretary of the Navy or his duly authorized representative may terminate this contract, provided that written notice to terminate, specifying the particulars wherein it is claimed that this contract has been violated, is transmitted by registered mail to the DONEE. The DONEE shall have ninety (90) days from receipt of the written notice to cure the violations or deficiencies set forth in said notice. If, at the end of such time, it appears to the Secretary of the Navy, or to his authorized representative, that the same have not been cured, the Contract shall be deemed to be terminated, in which event the DONEE shall transfer to the Government any and all rights that it may have in the Vessel, including rights to any improvements made to the Vessel or fixtures attached by the DONEE, as the Secretary of the Navy or his duly authorized representative so directs.
20. All costs associated with the retaking of possession which arise from the failure of the DONEE to perform the obligations assumed under the contract shall be borne by the DONEE. No liability shall be imposed upon the Government for termination even if such action is subsequently found to have been improper.
21. When the Vessel, or any part thereof, which has been transferred pursuant to this agreement is no longer required by the DONEE, disposition instructions will be requested from the donor. All costs of disposition will be borne by the DONEE.

22. The DONEE agrees to allow representatives of the Government access to all of the DONEE's records, documents, and facilities, including the Vessel, to assure the accuracy of information provided the donor and compliance with the terms of this contract.
23. The term "Vessel" as used herein includes without limitation ex-USS ALBACORE, its equipment, parts, manuals, and any other supplies on board at the time of delivery to the DONEE.
24. The term "Government" as represented by the Department of the Navy means the Secretary, Under Secretary, or Assistant Secretary of the Navy, the Commander, Naval Sea Systems Command, and any other duly authorized representative, acting within the limits of his authority, that the aforesaid designated officials may appoint.
25. The DONEE, including any successor in interest, shall establish and operate the Vessel on a non-profit basis as a public memorial/museum only, exhibit it adjacent to Market Street in Portsmouth, New Hampshire, and maintain the Vessel in such a manner that it will not cast discredit upon the Navy or upon the proud tradition of this historic Vessel, and not allow the Vessel to become a menace to navigation, public health or safety.

IN WITNESS WHEREOF, this contract has been duly executed as of the date first above written.

The UNITED STATES OF AMERICA,
Represented By The Department
of the Navy,

PORTSMOUTH SUBMARINE MEMORIAL
ASSOCIATION INC.

By James F. Goodwin

By Joseph G. Lintelle